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WESTERN DISTRICT OF LOUISIANA
SHREVEPORT, LOUISIANA

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

ARTIES T. HICKS

CIVIL ACTION NO. 07-1501

versus

JUDGE DONALD E. WALTER

WAL-MART STORES, INC.

MAGISTRATE JUDGE HORNSBY

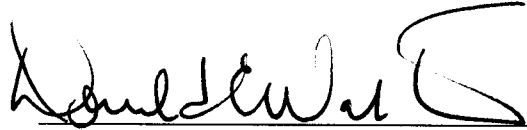
O R D E R

Before this Court is a Motion to Dismiss [Doc. #6], filed on behalf of defendant, Wal-Mart Stores, Inc. ("Wal Mart"), that was converted to a Motion for Summary Judgment. This motion was referred to United States Magistrate Judge Mark L. Hornsby for Report and Recommendation. Plaintiff, Arties Hicks ("Hicks") filed timely objections to the Report and Recommendation wherein he asserts that this Court should exercise its discretion and decline to dismiss plaintiff's age discrimination claim based on judicial estoppel.

In its motion, Wal Mart asserts that Hicks' age discrimination claim should be barred by judicial estoppel because Hicks failed to amend his schedules in a 2001 Chapter 13 bankruptcy proceeding to disclose the claim. Judicial estoppel is an equitable doctrine and the decision whether to invoke it is within the court's discretion. See In re: Coastal Plains, Inc., 179 F.3d 197, 205 (5th Cir. 1999). This Court notes that plaintiff concedes that the underlying facts as recounted by the Magistrate Judge in the Report and Recommendation are accurate. However, the Court finds that the remedy of dismissing this matter for failure to disclose a claim arising less than two months prior to the Bankruptcy Court entering a discharge on Hicks' Chapter 13 bankruptcy is unduly harsh.

Accordingly, acting within this Court's discretion, **IT IS ORDERED** that defendant's Motion to Dismiss [Doc. #6], **converted** to a Motion for Summary Judgment, be and is hereby **DENIED**.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 12 day of February, 2008.

A handwritten signature in black ink, appearing to read "Donald E. Walter", written over a horizontal line.

DONALD E. WALTER
UNITED STATES DISTRICT JUDGE